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Department of Administration's Division
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Training, and Rehabilitation*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN COHEN,

Plaintiff,

v.

STATE OF NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et
al.,

Defendants.

Case No. 2:19-cv-01033-APG-EJY

**REPLY IN SUPPORT OF DHRM AND
DETR DEFENDANTS' MOTION TO
DISMISS, OR IN THE ALTERNATIVE,
MOTION TO STRIKE (ECF No. 26)**

Defendants, the Nevada Department of Administration's Division of Human Resource Management (DHRM), and the Nevada Department of Employment, Training, and Rehabilitation (DETR), by and through counsel Aaron D. Ford, Attorney General of the State of Nevada, and Ian Carr, Deputy Attorney General, hereby reply in support of their Motion to Dismiss, or in the Alternative, Motion to Strike (ECF No. 26) (Motion to Dismiss) Plaintiff Steven Cohen's "Fourth Amended Petition for Judicial Review/Complaint/Writs of Mandamus and/or Prohibition" (ECF No. 19) (Complaint). This Reply is based on the following Memorandum of Points and Authorities and all papers and pleadings on file in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Introduction

On September 25, 2020, Plaintiff filed his Opposition to Defendants’ Motion to Dismiss. *See generally* ECF No. 29. Plaintiff demanded alternative relief in the form of a “Counter-Motion for Leave to Amend” and “Counter-Motion for an Order to Show Cause and Hearing as to why Writ Relief should not Issue, or, in the Alternative, Reconsideration of Dismissal of the Writs[.]” *See id.* at 1. The Court construed Plaintiff’s demands as separate motions (*see* ECF Nos. 30, 32) and denied Plaintiff’s demand for a show-cause hearing. *See* ECF No. 33. Defendants will respond separately to Plaintiff’s demand for leave to amend.

B. Plaintiff’s Procedural Arguments

Plaintiff first argues that he should be given leave to amend his defective Complaint as a matter of course. *See* ECF No. 29 at 7. However, amendment as a matter of course applies only to the first attempted amended pleading (*see* Fed. R. Civ. P. 15(a)(1)); Plaintiff’s new proposed amended complaint would constitute his fifth attempt. *See generally* ECF No. 28. As argued in Defendants’ Motion to Dismiss, Plaintiff’s Complaint (the only version of which he formally served) is defective as a matter of law and must be stricken. *See* ECF No. 26 at 5:10–25. Defendants will address the futility of Plaintiff’s new proposed amended complaint separately in response to his demand for leave (ECF No. 30).

C. Plaintiff’s Substantive Arguments

Plaintiff asserts a “Statement of Facts” reiterating the allegations in his Complaint. *See* ECF No. 29 at 3–6. Plaintiff then cites a litany of federal and Nevada statutes, regulations, and cases with cursory or non-existent analysis. *See id.* at 7–13. None of Plaintiff’s citations offer a separate cognizable private right of action¹ from the claims

¹ By way of example, Plaintiff cites to proposed legislation pending before the Nevada Legislature’s next regular session. *See* ECF No. 29 at 10:1–9. Not only does Plaintiff call for speculation as to whether proposed legislation will be enacted, but offering (either by brief or by proposed amended pleading) such as a basis to avoid dismissal is precluded by the relation-back doctrine. *See* FED. R. CIV. P. 15(c).

1 articulated in his Complaint, and none are availing or squarely address the arguments for
 2 dismissal set forth in Defendants' Motion to Dismiss. Plaintiff's demands for extraordinary
 3 writ relief and his reliance on Nevada law to bolster his federal claims were already
 4 dispatched by the Court. *See* ECF No. 33. Plaintiff fails to address Defendants' entitlement
 5 to Eleventh Amendment immunity, Plaintiff's lack of a sufficient nexus to justify injunctive
 6 relief, and his failure to state claims based on deficient allegations. *See generally* ECF No.
 7 26 (setting forth the bases for dismissal that Plaintiff left unaddressed). Plaintiff fails to
 8 provide cogent argument or rationale linking his citations to the deficiencies in his
 9 Complaint identified by Defendants' Motion to Dismiss.

10 Plaintiff finally offers an anecdote regarding a dispute with his job counselor that
 11 resulted in the closure of his employment case, requiring him to open a new case. *See* ECF
 12 No. 29 at 14. It is unclear how that purported incident cures in any fashion the deficiencies
 13 undermining his claims.

14 **D. Plaintiff Concedes Defendants' Eleventh Amendment Immunity**

15 Plaintiff's opposition brief appears devoid of any refutation of Defendants'
 16 entitlement to Eleventh Amendment immunity. *See generally* ECF No. 29. Defendants
 17 are categorically immune to Plaintiff's Americans with Disabilities Act (ADA) Title I claim
 18 and Fourteenth Amendment (due process and equal protection) claims. *See* ECF No. 26 at
 19 6–8; *see also Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 360 (2001) (ADA Title
 20 I does not abrogate states' Eleventh Amendment immunity); *see also Howlett v. Rose*, 496
 21 U.S. 356, 365 (1990) (state agencies are not amenable defendants for the purposes of
 22 constitutional civil rights claims). Plaintiff's failure to argue Defendants' entitlement to
 23 Eleventh Amendment immunity suffices as a concession that his claims are barred.

24 **II. CONCLUSION**

25 Plaintiff's scattershot attempt to cite as many unavailing authorities as possible does
 26 not obviate the fundamental defect in his case: Defendants are immune to Plaintiff's claims
 27 as a matter of law. No further iteration of amended pleading can nullify the Eleventh

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1 Amendment. Plaintiff furthermore fails to provide cogent argument rebutting the bases
2 for dismissal as set forth in Defendants' Motion to Dismiss.

3 For these reasons and those set forth in Defendants' Motion to Dismiss (ECF No.
4 26), Defendants respectfully request the Court grant Defendants' Motion to Dismiss (ECF
5 No. 26) and dismiss this case in its entirety, with prejudice.

6 DATED this 30th day of September, 2020.

7 AARON D. FORD
8 Attorney General

9 By: /s/ Ian Carr
10 IAN CARR
Deputy Attorney General

11 *Attorneys for Defendants, Nevada*
12 *Department of Administration's Division*
13 *of Human Resource Management, and*
14 *Nevada Department of Employment,*
Training, and Rehabilitation

15 **CERTIFICATE OF SERVICE**

16 I certify that I am an employee of the Office of the Attorney General, State of Nevada,
17 and that on September 30, 2020, I filed the foregoing, **REPLY IN SUPPORT OF DHRM**
18 **AND DETR DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE,**
19 **MOTION TO STRIKE (ECF No. 26)**, by this Court's CM/ECF system. Parties will be
20 notified by the Court's notification system.

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24 /s/ Karen Easton
25 Karen Easton, An employee of the
26 Office of the Attorney General
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